February 18, 2011

Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-338
Washington, DC 20580

Re: Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers

Dear Chairman Leibowitz:

Quicken Loans Inc. ("Quicken Loans") is pleased to submit its comments on the Federal Trade Commission's ("FTC") report "Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers." By way of background, Quicken Loans is an independent Detroit, Michigan-based conventional and FHA residential mortgage bank. We have been in business since 1985, and have approximately 4,000 employees. We do business in all 50 states and are one of the nation's five largest retail mortgage lenders, one of the five largest FHA lenders, and the largest online lender. We closed over $28 billion in retail mortgages in 2010.

The comments included in this document are the result of internal collaboration with In-House Realty, representing a nationwide network of realtors who align clients with the best agents in their area; One Reverse Mortgage LLC, the nation's third largest provider of reverse mortgage home loans; and Fathead LLC, which includes an eCommerce website for the leading brand in sports and entertainment graphics.

Quicken Loans and its family of companies appreciate the efforts of the Federal Trade Commission to reevaluate consumer data privacy protections in the current marketplace. As technology grows and evolves, so must consumer protection. We fully support initiatives that protect sensitive consumer information while bolstering business growth and development. We agree with much of the proposed framework from the FTC and agree that companies should provide consumers with the comfort that their information will not be improperly handled. Below we outline our comments and thoughts on the proposals from the FTC, as well as noting some issues that should also be addressed by the FTC and other agencies pertaining to consumer privacy.

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General Comments

Quicken Loans agrees that the efforts by the FTC and the Department of Commerce ("DOC") have the right intentions in mind as to protecting consumers online. However, we do have concerns about the approach by both the FTC and the DOC. We have read and analyzed the DOC's own report on consumer privacy that was released around the same time as the FTC's report. In the DOC's report, we see many similarities with what the FTC is hoping to achieve in the online privacy arena. However, we find that this strategy could prove problematic. With two separate agencies approaching revisions to current consumer privacy initiatives, we fear that overlapping regulation could cause confusion when it comes to enforcement. We do note that the DOC goes as far to recommend that that FTC take the lead on online privacy enforcement. However, with the passage of the Dodd-Frank Act this past summer, the Bureau of Consumer Financial Protection ("CFPB") will also be granted jurisdiction over certain non-bank financial companies. We fear that the CFPB may also attempt to enter the online privacy arena, once again muddying the waters and creating further confusion about who has enforcement authority and who will be drafting and creating new rules.

We can all agree that one thing that is not needed is more confusion—for the consumer or for businesses. We believe that multiple governmental agencies working toward varied goals will only lead to further confusion in the industry. Therefore, we recommend a few things in terms of jurisdiction and enforcement. We believe that either one agency should tackle the creation of rules so that overlapping and holey regulation does not occur. We also recommend that only one organization take the lead on enforcement. However, if it is decided that multiple agencies must tackle consumer privacy, we believe that a firm and clear line must be drawn between what agency will deal with consumer privacy and which will deal with commercial privacy, as well as who will be drafting rules versus who will be enforcing them.

Technology Innovation

While the FTC has been preparing its reports to discuss strategies for enhancing consumer privacy online, companies have already been acting. While it has taken the Administration months to propose a new plan and an initial report, many companies have worked hard to develop an approach of self-regulation. Already, a proposed privacy icon system is in the works that would inform

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consumers about what information is being collected and how that information is being used. This solution allows companies to visually demonstrate to consumers how their information is being handled with certain ads and data input. Additionally, Internet browsers like Microsoft's Internet Explorer and Mozilla's Firefox are already working on systems of their own where icons would be placed near ads that state a number of things, including whether information being collected will be used by advertisers, if the data is being purchased, or how long the data being collected would be kept.

The above solutions have been developed over the past few months since the FTC has been starting to look at privacy concerns more closely. We believe that with further self-regulation and work from Internet browsers that the need for a broad-based solution from the FTC or another regulatory agency is unwarranted. We believe that companies can and will develop their own policies that reinforce existing privacy policies and will help to visually enhance understanding of current systems for the consumer.

We do believe that the FTC can play a role in helping consumer policy, however. Instead of entering into the arena of creating a broad privacy policy law that affects all companies who use the Internet for commerce, we believe that the FTC should continue to help companies create their own tailored privacy system, whether it be through a privacy icon or through other means. We agree with the FTC that transparency is key and simplified choice is best for the consumer. However, we do not believe that an all-in or an all-out strategy works best for consumers. The FTC's main role should be in facilitating the growth of self-regulated and self-manufactured privacy systems. Companies that explicitly avoid steps to protect consumer privacy online should be punished, but companies that work hard and in ethical ways to protect the safety of their consumers should be rewarded. We suggest that the FTC focus their attention on companies that purposely avoid the protection of privacy for monetary gain.

We are also concerned that any proposed FTC regulation would be much too inclusive in the market place. A small company that only sells flowers locally and does not have ads on its site is very different than a large bank housing sensitive information in its databases and running five different ads on each different webpage. Would these two companies be subject to the same set of rules? If so, we are concerned that the affect on small businesses could be catastrophic as companies that

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only deal with simple transactions would not be able to afford the vast changes to their sites that would be required by the FTC. As it stands, the FTC wants all commercial entities that collect any information on or offline from a consumer to be subject to proposed privacy standards. While we acknowledge this could work with some practices, like the collection of credit card information, we believe that the definitions are much too broad right now. We believe companies are already working toward solutions, but if the FTC believes a privacy policy must be developed, that it be very specific to varying companies and not just a single approach to cover the entire marketplace.

We also have concerns with the "privacy by design" approach that the FTC is planning to take regarding consumer privacy. While we believe that companies should work to incorporate privacy protections into their practices through "Data security, reasonable collection limits, sound retention practices, and data accuracy," we believe that accomplishing this through regulatory means is impractical. Different companies use information in varying ways. Again, we believe that companies, if given the proper roadmap, can develop systems on their own that honor that full list of goals that the FTC is setting forth. Some companies need to keep consumer data longer than others. This is something many consumers also want so they do not have to constantly reenter information for each transaction or service. Would this fall under privacy by design standards, and would companies not be able to hold client information for longer than the initial transaction period?

We also want to stress the need for clear definitions as they relate to information stored for marketing purposes versus information stored for invasive advertising. We are concerned that some of the privacy design principles could be characterized as toxic despite their vital importance to internal marketing. As it stands now, it is not clear whether a company could store any information about the location of their consumers, how often they visit the site, or which pages they are viewing more often. These distinctions must be made in clear and objective terms. We also believe that companies should be able to track how consumers land on a webpage in the first place. These distinctions are all key for businesses in running profitable and user-friendly websites. These sorts of tracking activities should clearly be allowed in any proposed privacy framework.

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Do Not Track Technology

One solution being discussed by both the FTC and the DOC is the possibility of a Do Not Track ("DNT") system similar to the Do Not Call system currently in place from the FTC. We understand that the Do Not Call system has been universally applauded for helping stop unsolicited telemarketing calls. However, as we have stated before, Quicken Loans does not believe that an all-in or all-out approach is the best way to handle privacy online. Other solutions are already being considered in the marketplace so that consumers can choose how their information is used without a complicated and multi-tiered DNT system. Already, certain Internet browsers allow users to prevent the download of tracking cookies. This is easily executed by consumers on their computers today. As technology evolves, so do the solutions for how consumers can protect their information, and we believe an all-or-nothing approach is not the most useful way to approach the protection of information from a technology or consumer standpoint.

In addition to the consumer privacy icon approach that is already being developed by many companies and web browsers, another meaningful solution involves a change to the HyperText Transfer Protocol (HTTP) header that would allow consumers to change tracking settings based on different sites, and would allow them to opt-out of specific sites without opting out of all Internet sites. A universal DNT list would be cumbersome to execute and even harder to enforce. We believe the current work being done by companies is on the right track to providing consumers the protection they want. However, we would like to make it clear that any monumental changes to the HTTP system must be thoroughly considered as it pertains to the effect on a company. Significant changes will only hamper business operations and could potentially create even further confusion for companies and consumers when it comes to privacy access. The various solutions surrounding DNT must be further studied and investigated before rules are promulgated.

Commonly Accepted Practices

Quicken Loans agrees that companies should provide consumers with simplified choices about how their data is used. As we have discussed above, we believe that great steps are already being taken to simplify choice with privacy icons. However, we do have concerns about the scope and definition of commonly accepted practices. As it stands, the FTC states that "Companies do not need

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to provide choice before collecting and using consumers' data for commonly accepted practices, such as product fulfillment." We are in complete agreement here. A customer should not have to confirm that every detail they are entering in a transaction is being used by the company to fulfill a transaction. However, we do have concerns with the FTC's statement that "For practices requiring choice, companies should offer the choice at a time and in a context in which the consumer is making a decision about his or her data." We believe that this section is much too broad in its reasoning. We worry that the FTC wants every action taken online by the consumer and the business to be commonly accepted. However, the current definition is much too vague and leaves too much room for interpretation. Does all online operational data need to meet this definition of commonly accepted? What types of marketing directives would not be included in commonly accepted? Would a consumer have to consent to every single bit of user data that is being logged or stored regardless of whether this data was being used for internal marketing? We believe that websites are too complicated to be brought into this broad definition that all actions taken by a company must be commonly accepted or else a consumer must consent. This process is burdensome and clumsy for not only a company, but also the consumer.

What we do propose, once again, is that the FTC builds a framework for companies to follow and tailor to their own needs based on individual needs. Based on the size, scope, and product a company is distributing, some parts of the framework will apply more heavily to some companies. This way, not all companies are brought underneath an umbrella they do not need. Companies of similar industries can also share and develop practices together that can work to improve consumer privacy without burdening entire sections of the marketplace.

We thank you for this opportunity in allowing us to comment. Should you have any further questions, please feel free to contact me at (313) 373-7474 or at BillEmerson@quickenloans.com.

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Quicken Loans